



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

L. Preston Bryant, Jr.
Secretary of Natural Resources

5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000 Fax (757) 518-2103
www.deq.virginia.gov

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

Norfolk Naval Shipyard

Registration No. 60326

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and 1316, between the State Air Pollution Control Board and Norfolk Naval Shipyard, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the Regulations for the Control and Abatement of Air Pollution.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.
2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 1301.
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality.
6. "Navy" means the United States Department of the Navy. Navy is a "person" within the meaning of Va. Code § 10.1-1300.
7. "NNSY" means Norfolk Naval Shipyard, with the listed address of 2601 Effingham Street in Portsmouth, Virginia.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
9. "Order" means this document, also known as a Consent Order.
10. "Permit" means the Title V Federal Operating Permit, which was issued in the name of the Board to Norfolk Naval Shipyard on April 20, 2007.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5, Chapters 10 through 80.
12. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
13. "Va. Code" means the Code of Virginia (1950).
14. "VAC" means the Virginia Administrative Code.
15. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. NNSY is a Navy installation located in Portsmouth, Virginia. NNSY is a shipyard that performs a variety of activities in support of ship repair and overhaul operations including, but not limited to: painting and blasting, welding, electroplating, machining and crane loading.
2. NNSY operates under the Permit and is subject to a Maximum Achievable Control Technology ("MACT") under 40 CFR Part 63 Subpart II ("Shipyard MACT"), the National Standards for Shipbuilding and Ship Repair (Surface Coating).
3. NNSY uses waivers as a mechanism to allow and track thinning for special paint coatings; however, waivers are not required by the Permit or the Shipyard MACT.
4. On April 2, 2008, DEQ compliance staff conducted an inspection at NNSY to clarify data in the NNSY Shipyard MACT semi-annual monitoring report ("Report") for the period beginning July 1, 2007, and ending December 31, 2007.

A review of the Report indicated the following Volatile Organic Compound ("VOC") batch certification deficiencies:

- NNSY calculated the allowable thinning ratio when surface paint coatings were first applied but not for each subsequent batch of these coatings.
 - The maximum allowable thinning ratio calculated using the actual VOC content for coating F-111 in waiver No. 98-0013 indicated that the volume of thinner actually used with this coating was greater than the total allowable volume of thinner.
 - NNSY maintained records of volumes of the coatings to which thinning solvents were added but not records of volumes of each batch of these coatings.
5. 40 CFR 63.785(c)(2) of the Shipyard MACT requires NNSY to calculate the maximum allowable thinning ratio for each batch prior to the first application of each batch of coatings to which thinning solvent is added. NNSY violated the Shipyard MACT by only calculating the maximum allowable thinning ratio when the coatings were first applied and not for each subsequent batch.
 6. 40 CFR 63.785(c)(2)(vi) of the Shipyard MACT requires that the volume of thinner used by NNSY with each coating to be less than or equal to the total allowable volume of thinner for that coating. NNSY violated the Shipyard MACT by using a volume of thinner in coating F-111, waiver No. 98-0013 that was greater than the maximum allowable volume of thinner.
 7. 40 CFR 63.788(b)(3)(ii) of the Shipyard MACT requires NNSY to maintain records that contain the volume used of each batch of coatings to which thinning solvent was added. NNSY violated the Shipyard MACT by failing to maintain records of volumes of each batch of coatings to which thinning solvent was added.
 8. Reportedly, following discussions with DEQ staff during the April 2, 2008, inspection, NNSY implemented the correct procedures to calculate the allowable thinning ratio for each batch of coatings, to verify that the volume of thinner used does not exceed the maximum allowable volume of thinner and record the volumes of each batch of coatings to which thinning solvent was added.
 9. On June 30, 2008, DEQ issued NNSY a NOV for the deficiencies noted in C.4 of this Order.
 10. On July 22, 2008, DEQ enforcement staff met with NNSY personnel to discuss the NOV and observed the implementation of the correct procedures to calculate the allowable thinning ratio for each batch of coatings, to verify that the volume of thinner used does not exceed the maximum allowable volume of thinner and record the volumes of each batch of coatings to which thinning solvent was added.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1309 and 10.1-1316, orders NNSY, and NNSY voluntarily agrees, to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of NNSY for good cause shown by NNSY, or on its own motion pursuant to the Administrative Process Act after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified in Section C of this Order, including those matters addressed in the Notice of Violation issued to NNSY by DEQ on June 30, 2008. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, NNSY admits the jurisdictional allegations in the Order but does not admit the factual allegations or legal conclusions contained herein.
4. NNSY declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of substantive or procedural rights to which NNSY is entitled by Federal Law, the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
5. Failure by NNSY to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional Orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. NNSY shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake,

flood, other acts of God, war, strike, or such other occurrence. NNSY shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. NNSY shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the DEQ Regional Director verbally within 24 hours, and in writing within three business days, of learning of any condition above which NNSY intends to assert will result in the impossibility of compliance shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and NNSY. Notwithstanding the foregoing, NNSY agrees to be bound by any Permit compliance date which precedes the effective date of this Order.
10. In accordance with the Federal Anti-Deficiency Act, the obligations of the Navy under this section are expressly conditioned on the availability of Congressional appropriations, which NNSY agrees to seek in amounts sufficient to timely accomplish these undertakings. If sufficient appropriations are not available and cannot be obtained, NNSY will promptly inform the TRO of DEQ. In such case, the Director may terminate the Order and take other action, if so desired, or amend the Order with NNSY's consent.
11. This Order shall continue in effect until NNSY petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to NNSY. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve NNSY from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by NNSY and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of NNSY certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind NNSY to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of NNSY.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, NNSY voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 2nd day of June, 2009.

Francis L. Daniel
Francis L. Daniel, Regional Director
Department of Environmental Quality

NNSY voluntarily agrees to the issuance of this Order.

Date: 5/29/09 By: Richard D. Berkey
Name
SHIPYARD COMMANDER of NNSY.
Title

Commonwealth of Virginia

City/County of Portsmouth

The foregoing document was signed and acknowledged before me this 29th day of
May, 2009, by Richard D. Berkey, who is
(month) (name)

Shipyard Commander of NNSY on behalf of NNSY.
(title)

Victoria L. Sanderlin
Notary Public
7097522
Registration No.
My commission expires: July 31, 2011



APPENDIX A

1. Within thirty (30) days of the effective date of this Order, NNSY shall provide to DEQ, for review and approval, a plan defining the scope and methods of an environmental audit of the Shipyard MACT program to be conducted according to paragraph 2 of Appendix A. The plan shall identify what entity NNSY is recommending to conduct the audit.
2. Within one-hundred and twenty (120) days of DEQ approval of the environmental audit plan defined in paragraph 1 of Appendix A, NNSY shall conduct and complete an environmental audit of its compliance with the Shipyard MACT.
3. Within sixty (60) days of the completion of the environmental audit, NNSY shall submit a report to DEQ outlining findings and recommendations of the audit.
4. Within one hundred eighty (180) days of DEQ approval and agreement with NNSY on the findings and recommendations of the report submitted to DEQ pursuant to paragraph 3 of Appendix A, NNSY shall implement agreed upon recommendations and submit a letter stating that the recommendations have been implemented.
5. Mail all submittals required by this Appendix A to:

Francis L. Daniel, Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd
Virginia Beach, VA 23462